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No. 88-97

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

FORD MOTOR COMPANY,
Petitioner,

v.

GARY BRYANT,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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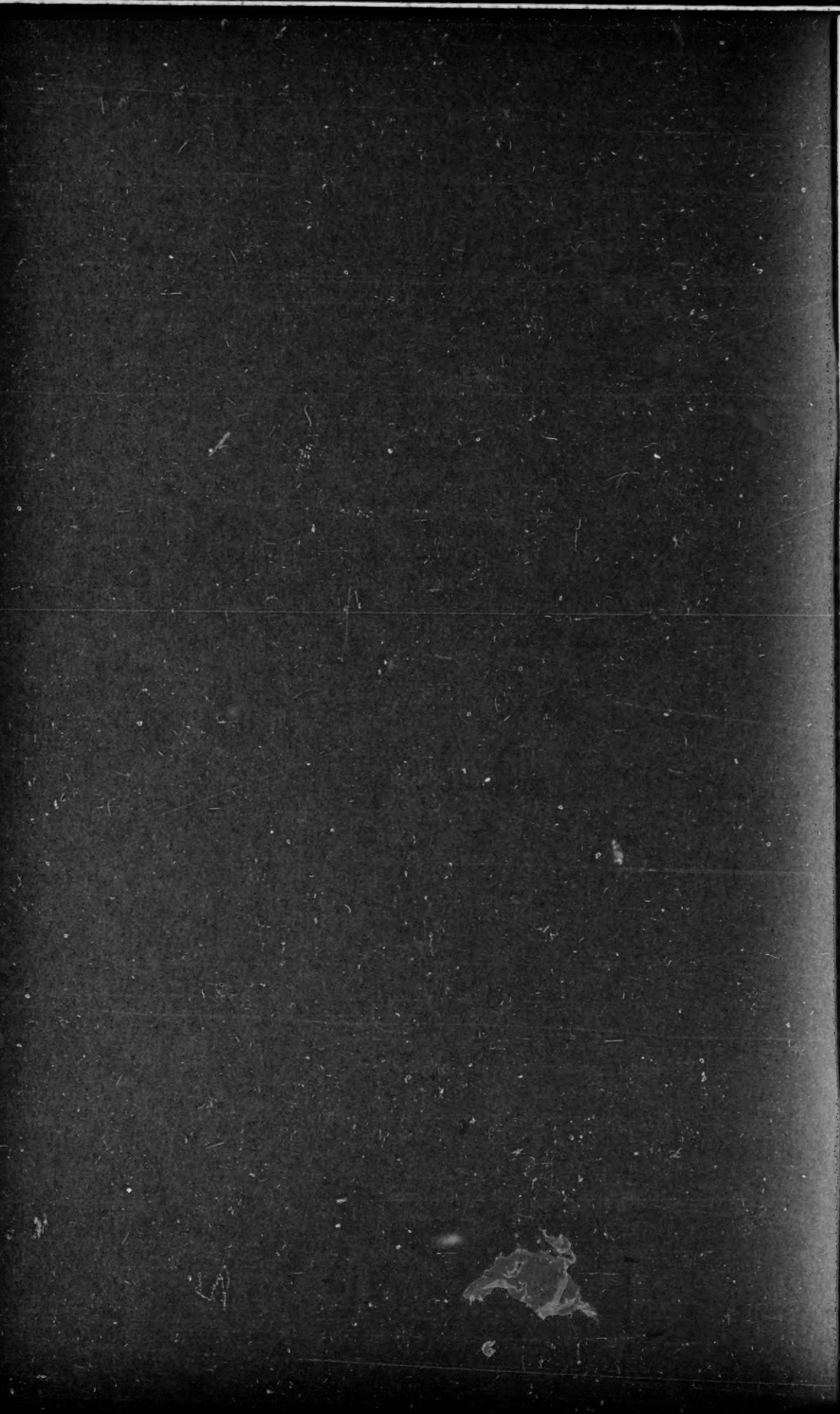

QUESTION PRESENTED

Where state law authorizes the filing of a complaint against fictitiously-designated (Doe) defendants when the plaintiff does not know the true names or identities of the Doe defendants, and where state law provides that if the true identities of the Doe defendants are ascertained and they are named by amended complaint and served within the statutory period, the amended complaint relates back to the date of filing of the original complaint; did the Court of Appeals err in ruling that in such a case in which Doe defendants are named, the 30-day period for removal pursuant to 28 U.S.C. Sec. 1446(b) (1982) does not commence until all Doe Defendants are either named, unequivocally abandoned by the plaintiff, or dismissed by the state court?

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Gary Bryant, (herein, "respondent" or "Bryant") opposes the petition of the Ford Motor Company (herein, "petitioner" or "Ford") for a writ of certiorari. As set forth below, the requirements for the issuance of a writ of certiorari are not satisfied, and no cause whatsoever exists for further review of this case.

COUNTERSTATEMENT OF THE CASE

While petitioner's statement of the case is essentially accurate, it is lacking in certain details which are necessary to a full understanding of the issues presented.

These additional details may be gleaned, largely, from the opinion of the Ninth Circuit.

Respondent was involved in a single-vehicle accident which rendered him a paraplegic. Within the one-year statute of limitations period, pursuant to California law, he filed a complaint for civil damages in the Los Angeles Superior Court. The complaint named as defendants the Ford Motor Company and fifty (50) fictitiously-designated defendants.

The use of fictitiously-designated defendants is authorized by Section 474 of the California Code of Civil Procedure "[w]hen the plaintiff is ignorant of the name of a defendant. . . ." As required by the California statute, the complaint stated the plaintiff's ignorance of the names of the fictitiously-designated defendants.

As the court of appeals noted, the complaint alleged that the fictitiously-designated defendants were related to each other and to Ford as "agents, servants, employees and/or joint venturers" and that Ford and each of Doe defendants were involved in the design, production, inspection and distribution of the vehicle which Bryant was driving, which vehicle the complaint alleged was defective in design and construction. *Bryant v. Ford Motor Company*, 844 F.2d 602, 603 (9th Cir. 1987). Thus, contrary to petitioner's assertion, *Petition* at 2, the complaint did contain allegations against the Doe defendants.

The case was removed to the United States District Court for the Central District of California upon Ford's verified petition. Bryant received no notice of the petition, and was first informed of the removal when served with a copy of the District Court's removal order.

In the district court, discovery revealed that petitioner had constructed only the vehicle chassis. However, as the court of appeals noted, Ford's routine record-destruction policies at that time precluded determination of the iden-

tities of the companies which had manufactured the component parts of the vehicle, including the seat and passive-restraint systems which were allegedly responsible for Bryant's injuries. *Id.* at 604.

On the basis of this discovery, however, Ford moved for summary judgment. In opposing summary judgment, Bryant noted that he intended to name the Doe defendants as soon as discovery provided him with a sufficient basis for doing so consistent with the rules of civil procedure. Nonetheless, the district court granted summary judgment in favor of Ford, on the basis that the discovery revealed no material facts supporting Ford's liability in the production of the passive-restraint system. The district court did not enter judgment against the Doe defendants. *Id.* at 604, n.2.

Bryant then moved the court to substitute City Ford Company, the seller of the vehicle, General Seating and Sash, the manufacturer of the seats, and Grumman-Olson Company, the producer of the body, for three of the fictitiously-designated defendants, and to remand the action to state court. (City Ford and Grumman-Olson are California corporations.) The district court denied the motion.

The Ninth Circuit Court of Appeals granted a limited remand of Bryant's appeal from the summary judgment to enable the district court to reconsider its previous rulings. When the district court declined to join the additional parties, Bryant again appealed.

On appeal, a three-judge panel of the court, applying Ninth Circuit law, held that the Doe defendants in the complaint were real, albeit unidentified parties, and accordingly at the time of removal, the district court was unable to determine whether complete diversity existed. The panel remanded the matter to the district court with instructions to remand the action to state court. *Bryant v. Ford Motor Company*, 794 F.2d 450, 453 (9th Cir.

1986). On Ford's petition, the matter was reheard by the court of appeals, *en banc*. Subsequent to the *en banc* decision, Ford petitioned for rehearing by the full court of appeals. The full court modified the *en banc* decision, resulting in the decision of which petitioner now seeks this Court's review.

In the modified *en banc* decision, the court of appeals noted that the California Civil Procedure Code permits a plaintiff to sue, under a fictitious designation, any potential defendant whose identity is, at the time of the filing of the complaint, unknown to the plaintiff. Where the plaintiff alleges in his complaint (as did Bryant in the instant complaint) that the true names of the fictitiously-pleaded defendants are unknown, Section 581a of the California Civil Procedure Code permits the amendment of the complaint to designate the fictitiously-pleaded defendants, and service of process, at any time within three years of the commencement of the action, upon plaintiff's ascertaining the true identity of the Doe defendants.[1] A complaint properly amended within this three-year limitation period then relates back to the date of the filing of the initial complaint.

As one court has noted, then, a plaintiff's right under California law to commence his action against fictitiously-designated defendants within the one-year statute of limitations, and then to amend the complaint to identify the Doe defendants within three years upon discovery of their true identities, is a part of the substantive limitations rules under California law, and is binding upon the federal courts under the *Erie* doctrine. *See CTS Printex, Inc. v. American Motorists Ins. Co.*, 639 F. Supp. 1272, 1275 (N.D. Cal. 1986).

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[1] Subsequent to commencement of the action, Sec. 581a of the California Civil Procedure Code was repealed, and replaced with the substantially similar provisions of Sec. 583.210 of the Code of Civil Procedure. *See Bryant v. Ford Motor Co., supra*, 844 F.2d at 605, n.4.

The opinion below begins with the recognition of the general rule prevailing in the Ninth Circuit—that the naming of Doe defendants in a complaint defeats diversity jurisdiction. *Bryant v. Ford Motor Company, supra,* 844 F.2d at 605. Then, acknowledging the reality of substantive California law, the opinion states that the nature of the allegations against the Doe defendants is irrelevant for removal purposes, and accordingly, where Does are properly pleaded in accordance with state law, the district court need not make "the near-impossible determination of when the allegations against the Doe defendants are 'specific' enough to defeat diversity." *Id.* Instead, the court below ruled that the 30-day period for removal would commence only after all Doe defendants are either named, unequivocally abandoned by the plaintiff (that is, where the plaintiff drops the Doe defendants from the complaint or where trial commences without service upon the Doe defendants), or when the Does are dismissed by the state court. *Id.* at 605-06. The opinion below noted that such an approach "accommodates both a plaintiff's right under California law to a three-year extension of the statute of limitations and a defendant's statutory right to removal under 28 U.S.C. Sec. 1441." *Id.* at 605.

REASONS FOR DENYING THE WRIT

The petition for certiorari should be denied. The decision of the Ninth Circuit does not conflict with any decision of this Court or any court of appeals. Since the petition raises none of the considerations governing review on certiorari set forth in Supreme Court Rule 17, this Court should deny the writ.

At the outset, it should be noted that the petition is premised on an almost hysterical view of the rule articulated by the Ninth Circuit in the subject case. Contrary to the suggestion of petitioner, the Ninth Circuit's ruling in this case is not about *whether* a state court action in

which Doe defendants have been properly pleaded in accordance with state law may be removed to federal court pursuant to 28 U.S.C. Sec. 1441(1982); but rather is about *when* such an action may be removed. Viewed from this perspective, the decision of the Court of Appeals, as respondent will herein demonstrate, conflicts with no decision of this Court or of any other court of appeals; and represents no denial of a non-resident defendant's right to remove a case to federal court pursuant to the federal judicial code.

The petition gets off to a bad start with its very first sentence, in which petitioner asserts that the Ninth Circuit, in promulgating its rule in this case, erroneously relied upon state law when it was bound to apply federal law. Not only does this assertion ignore the rationale for the Ninth Circuit's decision, but it also ignores the substantive effect of California state law permitting the pleading of fictitious defendants. *See CTS Printex, supra*, 639 F. Supp. 1272; *Lindley v. General Electric Co.*, 780 F.2d 797, 802 (9th Cir. 1986), *cert. den.*, 476 U.S. 1186 (1986). The Ninth Circuit's recognition of the substantive effect of the California law permitting Doe pleading and relation back is consistent with rulings of this Court that service-of-process aspects are integrally related to state statutes of limitations laws, and form a substantive element of those laws. *See Walker v. Armco Steel Corp.*, 446 U.S. 740, 751-52 (1980); *Ragan v. Merchants Transfer & Warehouse Co.*, 337 U.S. 530 (1949).

The Ninth Circuit did not apply state law to preclude removal in this case. Rather, it took due note of the effect of the state law with respect to the pleading of fictitiously-designated defendants in determining when removal could be possible, consistent with the substantive effects of the state law. The Ninth Circuit, thus, merely gives appropriate consideration to the substantive effect

of the California Doe pleading law. In doing so, the Ninth Circuit rule obviates the *Erie*-doctrine problems which would (and in connection with the instant case, did) result if removal is permitted before resolution of the uncertainties presented to the district court by a removal petition brought before all pleadings against fictitiously-pleaded defendants are resolved pursuant to state law.

Nor does the Ninth Circuit rule make the California pleading statute determinative of the citizenship of the fictitiously-designated defendants as petitioner asserts. *Petition* at 7. Petitioner points to nothing in the California statute which would justify such an assertion; and for good reason. Nothing in the California law establishes the California domicile of fictitiously-pleaded defendants. Nor does the Ninth Circuit opinion make the California statute determinative of a fictitiously-pleaded defendant's citizenship. Rather, the Ninth Circuit rule merely reflects the reality of the California Doe pleading law—that since the identity of the fictitiously-pleaded defendants is unknown, surely their citizenship and domiciliary status must be, likewise, unknown. Therefore, a removing defendant can never meet its burden, required by federal law, of demonstrating that complete diversity exists. Thus, the Ninth Circuit rule reflects both reality under the California pleading statute, and under 28 U.S.C. Sec. 1441 (1982)—that a removing party must demonstrate complete diversity, and the removing court must find that complete diversity exists. At most, the Ninth Circuit rule prohibits district courts from ignoring or disregarding the presence in the action of properly-pleaded, albeit fictitiously-designated defendants, where to do so would affect a plaintiff's substantive rights under state law. The Ninth Circuit rule simply defers any such removal until such time as the requisites for removal can be met and removal would not affect substantive rights available under state law.

Thus, contrary to the petitioner's assertion, there is no conflict between the Ninth Circuit opinion and this Court's decision in *Stewart Organization, Inc. v. Ricoh Corp.*, —— U.S. ——, 56 U.S.L.W. 4659 (June 21, 1988). In *Stewart*, the Court confronted the question of whether 28 U.S.C. Sec. 1404(a) (1982) permitted a federal court, in ruling on a motion to change venue, to consider a contractual forum-selection clause which was unenforceable under the law of the state in which the district court was sitting. The Court concluded that Sec. 1404(a) did permit consideration of the contractual clause, despite the provisions of the state law, noting that Sec. 1404(a) was "doubtless capable of classification as a procedural rule," 56 U.S.L.W. at 4662, and that in that case, the federal and state rules were capable of existing side-by-side without unnecessary conflict.

Stewart presented a conflict between state and federal procedural rules. The issue here is whether a federal rule must be applied in a manner which would affect substantive rights under state law. The Ninth Circuit rule provides a way for the federal removal procedure to be applied in a manner which would not deprive the plaintiff of substantive state rights. This Court's *Stewart* decision does not require review of the Ninth Circuit rule here, since *Stewart* neither compels nor suggests that a federal court adopt a procedural rule which cuts off state substantive rights.

A second fallacious (and misleading) assumption taints the petition in this respect. The petition is redolent in its suggestion that all Doe pleadings in California (and in this case in particular) are abusive and fraudulent. There is simply no evidence to support petitioner's assertion, *Petition* at 5, that the naming of large numbers of Does with spare or non-existent allegations against them is "universal practice" in California, or in any of the other states which authorize Doe pleading.

The error of this over-generalized assumption is demonstrated by the facts of the instant case. As noted, the complaint alleged that Ford, the only named defendant, and the Doe defendants were agents and joint venturers, and that together they were responsible individually or jointly for the design, manufacture and sale of the vehicle and its component parts, the defects of which were alleged to be responsible for the plaintiff's injuries. That this was not a knee-jerk pleading was demonstrated by the fact that upon appropriate discovery, Bryant was able, despite the routine destruction of records by Ford in accordance with its established policy, to identify the manufacturers of the seat and passive-restraint systems and the body of the vehicle, as well as its ultimate supplier. Upon being able to identify them, Bryant was provided with no mechanism in the federal court which would enable him to bring those defendants into the action—while such mechanisms were available in the state court.

In this respect, petitioner errs in its argument, *Petition* at 12, that the district court must ignore the Doe defendants as non-essential or fraudulently-joined parties. Nothing in the federal law nor in this Court's decisions supports the conclusion that all fictitiously-pleaded defendants, properly pleaded in accordance with state law, are non-essential or fraudulently joined.

While, as the petition notes, *Petition* at 9, this Court has held that fraudulently or wrongfully joined parties may be ignored for purposes of determining diversity jurisdiction, the Ninth Circuit rule does not fly in the face of such holding. Rather than requiring that fraudulently or wrongfully joined parties be recognized, the Ninth Circuit rule simply establishes the circumstances under which the determination of whether the Doe defendants are wrongfully or fraudulently-joined shall be made. And the Ninth Circuit rule does so in a fashion which preserves the substantive rights of the plaintiff

under California law—rights which would be lost (as this case amply demonstrates) if removal were permitted to occur prematurely.

Thus, there is no conflict with this Court's injunction in *Pullman Co. v. Jenkins*, 305 U.S. 534, 541 (1939), that

> [i]t is always open to the non-resident defendant to show that the resident defendant has not been joined in good faith and for that reason should not be considered in determining the right to remove.

The Ninth Circuit rule does not prevent the non-resident defendant from doing this. It merely specifies how and when the defendant may demonstrate such, and the district court may find such, in view of the reality of the effect of the Doe pleading permitted by California law.[2]

This recognition of the substantive effect of the state Doe pleading statute is, contrary to petitioner's contention, *Petition* at 11-12, not inconsistent with federal law. While Federal Rule of Civil Procedure 17, as petitioner points out, prohibits an action being maintained in the name of a fictitious *plaintiff*, it does not prohibit actions being maintained against fictitiously-designated *defendants*. While the Doe-defendant pleading mechanism is not specifically authorized by the Federal Rules, it is not specifically prohibited either.

> Even though the John Doe device is disfavored by many federal courts, and some courts have stated

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[2] The wisdom and workability of this rule is demonstrated by the facts of the instant case. Discovery enabled the plaintiff to finally identify the manufacturers of the seat and passive-restraint systems, and the seller of the vehicle. Had removal not been premature, the plaintiff could have amended his complaint in state court to designate these defendants for the first three Does. If the removal question had been presented at that time, with the case in that posture, the district court would not have had to speculate that the Does were wrongfully or fraudulently-joined, and would in fact have determined that they were essential parties.

> that it is not permitted in federal practice, there is no express statutory or rule prohibition against its use. Since the practice plays an important part in some states in the tolling of statute of limitations and in the procedure for acquiring personal jurisdiction, an absolute rule against its use in federal court seems unwise.

14 Wright, Miller and Cooper, *Federal Practice and Procedure*, Sec. 3642 (2d ed. 1985).

A realistic view of the Ninth Circuit rule, as one which determines not *whether* a case in which Doe defendants have been properly pleaded in accordance with state law may be removed, but *when* such a case may be removed, demonstrates that the rule is perfectly consistent with the federal policy encouraging removal at the earliest possible time in the proceedings. The Ninth Circuit rule merely defines when that time might be, in recognition of the substantive effect of the Doe pleading rules of California law. Certainly, a case is not removable on the basis of diversity before diversity can be established. Where the identity of the defendants remains unknown, diversity cannot be established.

The Ninth Circuit's requirement that the Doe allegations be either dismissed or unequivocally abandoned by the plaintiff, or that the case proceed to trial without service on the Does, is not inconsistent with the provisions of the second paragraph of 28 U.S.C. Sec. 1446(b) (1982), which authorizes removal within 30 days "after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion order or *other paper* from which it may first be ascertained that the case is one which is or has become removable." *Id.* (emphasis added). The Ninth Circuit rule merely defines the circumstances under which the district court can rationally make the requisite diversity finding.

Thus, the conflict which the petition attempts to draw between the Ninth Circuit rule and various district court

cases applying Sec. 1446(b), *Petition* at 14, simply does not exist. In *Lee v. Altamil Corp.*, 457 F. Supp. 979 (M.D. Fla. 1978) and *Miller v. Stouffer Chemical Co.*, 527 F. Supp. 775 (D. Kan. 1981), discovery provided the "other paper" upon which it could be determined that the amount in controversy met the federal jurisdictional standard. In *Camden Industries Co. v. Carpenters Local Union, etc.*, 246 F. Supp. 252 (D. N.H. 1965), interrogatory responses severed as the "other paper" upon which it could be first ascertained that an industry involved in interstate commerce was involved, thus indicating a basis for federal jurisdiction. The Ninth Circuit rule in no way delimits application of Sec. 1446(b) in these circumstances.

Even *Barngrover v. M. V. Tunision Reefer*, 535 F. Supp. 1309 (C.D. Cal. 1982), in which a removal petition filed more than 30 days after the filing of an "at issue memorandum" in state court indicating that all essential parties had been served and that no other pleadings would be filed, was held too late to effect removel, does not present a conflict with the Ninth Circuit rule. Certainly, the filing of such a memorandum by a plaintiff in a case in which Does has been properly pleaded would constitute an "unequivocal abandonment" of the Does by the plaintiff under the Ninth Circuit rule.

Nor does the Ninth Circuit rule conflict with this Court's decision in *Grubbs v. General Electric Credit Corp.*, 405 U.S. 699 (1972). There, the Court applied a "longstanding" rule that "where after removal a case is tried on the merits without objection and the federal court enters judgment, the issue in subsequent proceedings on appeal is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in that court." *Id.* at 702. The *Grubbs* case was removed from Texas state court by the United States after it had been named in a cross-action. The original parties were,

respectively, citizens of Texas and New York. After a trial on the merits, to which no party objected, the district court entered judgment against General Electric on its claim and in favor of Grubbs on his claim, and dismissed the claims both of and against the United States. Since complete diversity did exist, however, between Grubbs and General Electric, the only remaining parties at the time judgment was entered, this Court ruled consistent with the "longstanding" policy that in such a circumstance, it would serve no purpose to look beyond whether federal court jurisdiction would have lain if the case was in the posture it was in at the time judgment was entered. *Id.* at 705-06.

Two significant factors distinguish *Grubbs* from the instant case, however. *First*, in *Grubbs* the judgment was entered *after trial on the merits*, to which no party objected. Here, the judgment was not entered after *trial* on the merits. *Second*, in *Grubbs*, at the time judgment had been entered, the case was disposed of as to all other defendants, and the Court could find that there was a basis for federal jurisdiction as to the parties remaining at time of judgment—since complete diversity existed between the remaining parties. In the instant case, the district court did not dismiss the action against the Doe defendants at the time it entered judgment. Therefore, a finding of complete diversity against the parties remaining in the action at the time of judgment could not be made.[3]

The significance of the judgment being after trial, on the merits, cannot be underplayed. As the Court pointed out in *Grubbs*, its rule there was derived from its opin-

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[3] The Ninth Circuit recognized the limited applicability of the rule in *Grubbs*. *Bryant v. Ford Motor Co.*, *supra*, 844 F.2d at 606, n.9. There, the court noted that since the district court had not dismissed the action with respect to the Doe defendants, complete diversity did not exist at the time the judgment was entered, and the *Grubbs* rule was inapplicable.

ions in *Baggs v. Martin*, 179 U.S. 206 (1900) and *Mackay v. Unita Development Co.*, 229 U.S. 173 (1913). In both of those cases, judgment had been entered after trial on the merits, and the jurisdictional question was raised for the first time on appeal, by the party losing in the district court, who was also the party responsible for the initial invocation of the federal court's jurisdiction. In such a circumstance, permitting the matter to go to adjudication on the merits constituted a waiver of any jurisdictional defects. This, in turn, warranted the rule that the question of the trial court's jurisdiction be decided on the basis of the status of the case at the time the judgment was entered. This Court explained these rulings in *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 16-17 (1951):

> In those cases the federal trial court would have had original jurisdiction of the controversy had it been brought in the federal court in the posture it had at the time of the actual trial of the cause or of the entry of the judgment. That is, if the litigation had been initiated in the federal court on the issues and between the parties that comprised the case at the time of trial or judgment, the federal court would have had cognizance of the case. This circumstance was relied upon as the foundation of the holdings. The defendant who had removed the action was held to be estopped from protesting that there was no right to removal. Since the federal court could have had jurisdiction originally, the estoppel did not endow it with a jurisdiction it could not possess.

The rule in *Grubbs*, then, avoids a sort of *second bite* at the judicial apple, in which a party may invoke the jurisdiction of the federal court, and then, upon suffering an adverse judgment, deny that same jurisdiction and try again in the state court. But application of the *Grubbs* rule where the judgment has not been after trial on the merits would only encourage a judicial shell game,

in which a case could be prematurely removed, disposed of without a trial on the merits, and then have the removal validated on the basis of the status of the parties at the time of such disposition.

Therefore, the *Grubbs* rule can be looked at as an estoppel rule and one which both promotes judicial economy and discourages *second bites* at the judicial apple. Application of the *Grubbs* rule here would instead promote judicial forum shopping, and validate premature, improper removal. Thus, the *Grubbs* test is of dubious applicability to the instant case. The Ninth Circuit rule, accordingly, cannot be viewed as inconsistent with that test.

The Ninth Circuit rule is absolutely consistent with this Court's decision in *American Fire & Casualty Co. v. Finn*, *supra*, 341 U.S. 6, a case more clearly on point. In *Finn*, after removal, pursuant to 28 U.S.C. Sec. 1441(c) (1982), and a trial on the merits, judgment was entered against the removing (non-domiciliary) party, but in favor of two other (domiciliary) defendants. The removing defendant then sought to have the judgment vacated and the case remanded to the state court. The district court denied the motion and the Court of Appeals affirmed, on the basis that the action against the foreign defendant was "separate and independent" from that against the resident defendants.

This Court reversed, finding that "where there is a single wrong to plaintiff, for which relief is sought, arising from an interlocking series of transactions, there is no separate and independent claim or cause of action under 28 U.S.C. Sec. 1441(c) (1982)," *id.* at 14, and thus that there was no right to removal. *Id.* at 16.

The Court went on, however, to hold that removal could not be validated on the basis of the status of the parties at the time judgment was entered. Since a domiciliary defendant was and remained a party defendant at the time of judgment (as did the Does in the instant

case), the Court noted that the district court would not have had original jurisdiction of the case, and "[t]he posture of the case even at the time of judgment also barred federal jurisdiction." *Id.* at 17. The Court noted:

> To permit a federal trial court to enter a judgment in a case removed without right from a state court where the federal court could not have original jurisdiction of the suit even in the posture it had at the time of judgment, would by the act of the parties work a wrongful extension of federal jurisdiction and give district courts power the Congress has denied them.

Id. at 18.

Grubbs does not require that the Ninth Circuit rule in the instant case apply only to cases in which no judgment has been entered. In its most expansive reading, *Grubbs* would require a different rule in a situation, not presented by the instant case, in which the judgment of the district court had been entered after a trial on the merits, and the objection to the district court's jurisdiction was being raised by the removing party. Application of the Ninth Circuit rule in the instant case, even after judgment had been entered, where the potentially domiciliary defendants remained in the case, is not inconsistent with *Grubbs* and is perfectly consistent with this Court's holding in *Finn*. This Court's review on that basis is not warranted.

CONCLUSION

The petition fails to demonstrate that the opinion of the Ninth Circuit, of which review is sought, conflicts with the opinion of any other Circuit Court of Appeals. And, as demonstrated herein, petitioner has failed to demonstrate that the Ninth Circuit rule is contrary to the decisions of this Court. The conflicts with this Court's opinions which are alleged are largely illusory; and as demonstrated, the Ninth Circuit rule is consistent with

both the spirit and the letter of the pertinent decisions of this Court.

Further, and most important, as demonstrated herein, the Ninth Circuit rule appropriately recognizes the substantive rights of the plaintiff which the California Doe-pleading statute provides, and properly and efficiently accommodates those rights with the defendant's removal rights under federal law, in a manner which obviates serious *Erie*-doctrine problems. Thus, the Ninth Circuit rule accomplishes the twin objectives of this Court's *Erie* doctrine: it discourages forum shopping by defendants by insuring that removal is not accomplished before state-law mechanisms have been utilized to determine the identity and citizenship of all defendants; and it insures that premature removal results in no inequitable administration of the law.

For these reasons, the petition should be denied.

Respectfully submitted,

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